IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15474 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE K.A.PUJ

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

BHARATBHAI DHULABHAI PATEL & 1 - Petitioner(s)
Versus
DIRECTOR & 6 - Respondent(s)

==========

Appearance :
MR BS PATEL for Petitioner(s) : 1 – 2.
MRS RANJAN B PATEL for Petitioner(s) : 1 - 2.
MRS VS PATHAK, AGP for Respondent(s) : 1-3,
MR TUSHAR MEHTA for Respondent(s) : 4 - 6.
MR HARIN P RAVAL for Respondent(s) : 7,

==========

CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE K.A.PUJ

Date : 27/07/2007
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

Rule. Mrs VS Pathak, learned AGP for respondent Nos. 1 to 3, Mr Tushar Mehta, learned counsel for respondent Nos. 4, 5 and 6 and Mr Harin Raval, learned counsel for respondent No.7 waive service of Rule.

In the facts and circumstances of the case and considering the urgency in the election matters, we have taken up the petition for final disposal today.

2. The Director of Agricultural Marketing and Rural Finance issued order dated 11.5.2007 fixing the date of election to APMC, Himmatnagar. The detailed election program was thereafter issued on 15.5.2007 with the following dates for various stages of election:-

1.	Date of announcement of elections	14.05.2007
2.	Date on which the Authorised Officer shall issue instructions for preparation of the voters' list	14.05.2007
2A.	Date of communicating the names of voters to the Authorised Officer [Rule 7(1)]	22.05.2007
3.	Preparation of the provisional list of voters [Rule 7(2)]	29.05.2007
4.	The last date for submitting objections/ applications for amendment/ addition to the provisional list of voters [Rule 8(1)]	12.06.2007
4A.	The date for republication of the preliminary list with the notice prepared after the amendment, addition, suggestion/objections in the preliminary list are submitted.	16.06.2007
4B.	The last date for submitting objections to/applications for amendment to the revised list of voters [Rule 8(1A)]	22.06.2007
5.	The date of publication of the final list of voters	26.06.2007
6.	The date of filing nomination forms [Rule 10(2)]	26.07.2007
7.	The date of publication of the preliminary lists of candidates (Rule 14)	26.07.2007
8.	Date of scrutiny of nomination forms (Rule 15)	27.07.2007

9.	Date of withdrawing nomination forms (Rule 17(1)	30.07.2007
10.	Date of publication of the final list of candidates [Rule 17(2)]	30.07.2007
11.	Date of polling	07.08.2007
12.	Date of counting	08.08.2007
13.	Date of declaration of the result of elections	As soon as counting is over
	Sd/- MD Chauhan, Director of Agricultural Marketing and Rural Finance	

3. 14.05.2007 was the date on which the Authorized Officer issued instructions to the APMC as well as the co-operative societies in the market area to communicate by 22.5.2007 the names of traders holding general licenses falling under Section 11(1)(ii) and the names of members of managing committees of the co-operative societies falling under clauses (i) and (iii) of Section 11(1). Following the above election program, the names were so communicated by 22.5.2007. Thereafter, the provisional list of voters was published on 29.5.2007 and the objections were invited by 12.6.2007. The petitioners objected to the inclusion of names of members of managing committees of respondent Nos. 4 to 6 (hereinafter referred to as “the respondent societies”). On 15.6.2007, the Authorized Officer - Deputy Director, Agriculture Marketing and Rural Finance & District Registrar, Sabarkantha passed the impugned order (Annexure “A”) rejecting the objections.

4. The present petition challenges the above decision dated 15.6.2007 on the ground that the respondent societies, though registered on 30.4.2007 under the Gujarat Co-operative Societies Act, 1961, obtained general licenses from the APMC under Section 27 of the Gujarat APMC Act, 1963 only on 21.5.2007, that is, after the date of declaration of election. Strong reliance is placed by Mr

Patel on our judgment dated 16.7.2007 in Special Civil Application No. 11995 of 2007 in relation to elections to APMC, Junagadh.

5. On the other hand, Mr Harin Raval, learned counsel for the APMC, Himmatnagar and Mr Tushar Mehta, learned counsel appearing for the respondent societies have opposed the petition and submitted that all the three respondent societies were registered under the Co-operative Societies Act on 27th/30th April 2007 i.e prior to the date of declaration of the election by the Director, AMRF.

It is further submitted that the respondent societies had also applied for general license from the APMC on 5th/6th May 2007 which was also prior to the date of declaration of the election by the Director, AMRF. It is, therefore, submitted by the learned counsel for respondent Nos. 4 to 7 that subsequent declaration of the election program cannot take away the right of the members of managing committees of the respondent societies to participate in the elections.

It is also submitted on behalf of respondent Nos. 4 to 7 that the applications made by the respondent societies for general license from the APMC were made bona fide and that the APMC cannot be said to have granted the licenses with any oblique motive or mala fides, more particularly when the notification for covering the concerned agricultural commodities under the APMC was issued on 9.5.2007 and, therefore, there was no occasion for the respondent societies to apply for licenses prior to May, 2007.

6. Having heard the learned counsel for the parties, we find considerable substance in the submission of Mr Patel for the petitioners that the controversy involved in this petition is squarely covered by the principles enunciated in our judgment dated

16.7.2007 in Special Civil Application No. 11995 of 2007 (APMC, Junagadh matter). In the aforesaid judgment, we have examined the scheme of the APMC Act and the APMC Rules, particularly the Rules relating to elections to APMC and we have held as under :-

> "35. To sum up then, our conclusions are as under :-
>
> I. "**The relevant date**" for determining the eligibility of a person for inclusion in the voters' list for elections to APMC is **the date on which the Authorized Officer is to be communicated the names as indicated in sub-rule (1) of Rule 7** of the APMC Rules, 1965, that is to say, before that date -
>
> (i) a co-operative society must have been registered under the Cooperative Societies Act as a cooperative society for dispensing agricultural credit and must also have commenced the activity of dispensing agricultural credit.
>
> (ii) a trader who has been granted license by the APMC to carry on business as a trader in the market area must have commenced business as a trader.
>
> (iii) a co-operative marketing society registered as such under the Co-operative Societies Act and having obtained a general licence from APMC must also have commenced its business of marketing.
>
> II. The only exception to the above general rule is to be found in Rule 6. Hence, if a person, whose name was entered in the list of voters, has ceased to hold the capacity in which his name was entered in such list, such person shall not be qualified to vote at the election to which the list of voters relates.
>
> III. To be eligible for inclusion in the list of voters for elections to APMC, -
>
> (i) A co-operative society must have obtained registration under the Co-operative Societies Act for dispensing agricultural credit before the date on which the Director has fixed the date of elections to APMC (i.e. the date of declaration of elections).

(ii) A person must have obtained from APMC a general license for trader before the date of declaration of elections.

(iii) A co-operative marketing society must have obtained its registration under the Co-operative Societies Act and a general license from APMC before the date of declaration of elections.

IV. Challenge to the legality and validity of registration of a society under the Co-operative Societies Act can only be entertained by the forum under Sections 153 and 155 of the Gujarat Co-operative Societies Act, 1961, and not by the Election Tribunal constituted under Rule 28 of the APMC Rules, 1965.

V. Challenge to the legality and validity of a license issued by APMC can only be entertained by the concerned forum under Section 27 of the Gujarat APMC Act, 1963.

VI. The question whether a co-operative society commenced the activity of dispensing agricultural credit before the relevant date, whether a trader possessing general license from APMC commenced the business of trading before the relevant date or whether a co-operative marketing society possessing general license from APMC commenced its business of marketing before the relevant date are questions of fact which the Authorized Officer has jurisdiction to decide under Rules 7(2) and 8 of the APMC Rules, 1965 and the Election Tribunal under Rule 28 also has the jurisdiction to examine these questions."

7. Thus, in view of the above principles, it is clear that since the respondent societies, though registered under the Co-operative Societies Act on 30.4.2007, had not obtained from APMC general license for traders till the declaration of elections made on 11.5.2007, the members of managing committees of the said respondent societies cannot be said to be eligible for participating in the elections.

8. At this stage, we may deal with the submission on behalf of respondent Nos.4 to 7 that the Director for the first time issued

notification dated 9.5.2007 for covering certain agricultural commodities under the APMC, Himmatnagar and, therefore, there was no occasion to apply for general license earlier.

On the other hand, Mr Patel for the petitioners has pointed out that the other co-operative marketing societies, whose managing committee members are included in the list of voters, were holding general license for a long period, much prior to the declaration of the date of election.

9. In our judgment dated 16.7.2007 in the matter of elections to APMC, Junagadh, we have indicated the underlying rationale for laying down the principle that the registration of the co-operative society and the license must have been obtained prior to the date of declaration of elections. Looking to the provisions of Section 26 of the APMC Act providing for duties of Market Committee, it is obvious that the voters in all the three constituencies must have had some experience of operating within the market area of APMC, either dispensing agricultural credit, trading/marketing and, therefore, registration under the Co-operative Societies Act / license from the APMC must have been obtained before the date of declaration of elections, only then it can be said that by the relevant date (that is the date on which the names are to be communicated by the APMC/co-operative societies to the Authorized Officer under sub-rule (1) of Rule 7) such persons would be having some experience in the concerned area so as to enable them to elect the members of the APMC for the purpose of discharging duties referred to in Section 26 of the Act.

10. For the reasons aforesaid, the petition is allowed. The impugned order dated 15.6.2007 at Annexure “A” to the petition is quashed and set aside in so far as it rejects the objections of the petitioners against the names of members of managing committees

of respondent Nos. 4, 5 and 6 societies. In other words, respondent Nos. 1, 2, 3 and 7 shall not permit the members of managing committees of respondent Nos. 4, 5 and 6 societies to participate in the ensuing elections to APMC, Himmatnagar either as voters or as contesting candidates.

Rule is made absolute in the above terms.

Direct Service is permitted today.

[M.S. SHAH, J.]

[K.A. PUJ, J.]

sundar/-